

Tab 3

Dana Faulkner

August 16, 2005

New York, NY

1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
MDL Docket No. 01Cv12257-PBS

-----\*

In re: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )

-----\*

THIS DOCUMENT RELATES TO: )  
ALL ACTIONS )

-----\*

Tuesday, August 16, 2005

New York, New York

Time: 9:57 a.m.

Deposition of DANA FAULKNER, held at the  
offices of Hogan & Hartson, LLP, 875 Third Avenue,  
New York, New York, as taken before Josephine H.  
Fassett, a Shorthand Reporter and Notary Public of  
the State of New York.

Henderson Legal Services  
(202) 220-4158

Dana Faulkner

August 16, 2005

New York, NY

<p style="text-align: right;">30</p> <p>1 meeting.</p> <p>2 A No, not prior to the meeting.</p> <p>3 Q So prior to your meeting with</p> <p>4 counsel yesterday you didn't have an independent</p> <p>5 understanding --</p> <p>6 A Awareness.</p> <p>7 Q -- of what this litigation was</p> <p>8 about?</p> <p>9 A No.</p> <p>10 Q Were you involved at all in the</p> <p>11 search for documents that may have been requested</p> <p>12 by the plaintiffs in relation to this litigation?</p> <p>13 A I was asked to look for anything</p> <p>14 that I might have had.</p> <p>15 Q And did you?</p> <p>16 A Yes.</p> <p>17 Q Did you find anything?</p> <p>18 A No.</p> <p>19 Q Can I ask just a little bit more</p> <p>20 detail about that search? Where did you look for</p> <p>21 documents?</p> <p>22 A In files that are in my basement.</p>	<p style="text-align: right;">32</p> <p>1 A HR information mostly regarding</p> <p>2 pension and things like that.</p> <p>3 Q I want to talk a little bit about</p> <p>4 your interaction with customers while you were</p> <p>5 working at BMS.</p> <p>6 A Okay.</p> <p>7 Q What sort of information were your</p> <p>8 customers interested in when you called on them?</p> <p>9 A They were interested in the</p> <p>10 scientific data, the studies that were being</p> <p>11 reported regarding the use of my drugs and various</p> <p>12 tumor types.</p> <p>13 Q Did customers ever ask you about --</p> <p>14 well, let me back up and ask you: Do you have an</p> <p>15 understanding of how the drugs you were promoting,</p> <p>16 when you were an employee at BMS, how they were</p> <p>17 reimbursed by the Medicare program?</p> <p>18 A We had an understanding of how that</p> <p>19 worked, yes.</p> <p>20 Q And can you tell me what you</p> <p>21 understood how that worked?</p> <p>22 A Well, the --</p>
<p style="text-align: right;">31</p> <p>1 Q And these are files that you</p> <p>2 collected during your employment at BMS?</p> <p>3 A Yes.</p> <p>4 Q What sort of documents, when you</p> <p>5 were looking through those files, what sort of</p> <p>6 documents were you looking for?</p> <p>7 A Any call report, memos to</p> <p>8 supervisors, things like that.</p> <p>9 Q Were you looking for those</p> <p>10 categories of documents, anything that fell into</p> <p>11 those categories of documents or was there</p> <p>12 something more specific you were looking for? In</p> <p>13 other words, were you looking for any call report</p> <p>14 or call reports that relate to a specific topic?</p> <p>15 A No, I was looking for any.</p> <p>16 Q What about, did you have any</p> <p>17 electronic files that were dated during your</p> <p>18 employment?</p> <p>19 A No.</p> <p>20 Q Other than the files in your</p> <p>21 basement, did you keep any other documents related</p> <p>22 to your employment at BMS?</p>	<p style="text-align: right;">33</p> <p>1 MR. ZUCKER: By that do you mean</p> <p>2 Medicare Part B reimbursement?</p> <p>3 MR. NOTARGIACOMO: Right.</p> <p>4 A So the common denominator I guess</p> <p>5 was the AWP that Medicare would use and the office</p> <p>6 was reimbursed at a percentage of AWP for the</p> <p>7 drugs that they used.</p> <p>8 Q This was an understanding you had</p> <p>9 while you were employed at BMS?</p> <p>10 A Yes.</p> <p>11 Q What about reimbursement for</p> <p>12 oncology drugs by private insurers, did you have</p> <p>13 an understanding at that point as to how</p> <p>14 reimbursement worked?</p> <p>15 A No, not particularly, no.</p> <p>16 Q Did you have an understanding that</p> <p>17 AWP played a part in the reimbursement by many</p> <p>18 private insurers?</p> <p>19 A The understanding that I had was</p> <p>20 generally that the privates followed what Medicare</p> <p>21 did, beyond that, I don't -- I wasn't familiar</p> <p>22 with any specifics.</p>

Dana Faulkner

August 16, 2005

New York, NY

<p>34</p> <p>1 Q What about the Medicaid program, did</p> <p>2 you have an understanding about how that</p> <p>3 reimbursed for drugs?</p> <p>4 A Not really.</p> <p>5 Q When you were a sales rep for BMS,</p> <p>6 did you have an understanding or did you have</p> <p>7 knowledge about what the AWP was with the drugs</p> <p>8 that you were promoting?</p> <p>9 A Yes.</p> <p>10 Q And how did you gain that</p> <p>11 information?</p> <p>12 A There was a compendia listing that</p> <p>13 was available in a national publication where we</p> <p>14 could access that information.</p> <p>15 Q Which compendia was that, do you</p> <p>16 remember?</p> <p>17 A I think it -- well, the A triple C</p> <p>18 was the little publication or put out the</p> <p>19 publication.</p> <p>20 Q And is that something that was made</p> <p>21 available to you through BMS?</p> <p>22 A Yes.</p>	<p>36</p> <p>1 A Usually the sales force.</p> <p>2 Q Do you know how often you'd receive</p> <p>3 one of those voicemails?</p> <p>4 A No.</p> <p>5 Q Was it on a monthly basis, a weekly</p> <p>6 basis, a daily basis?</p> <p>7 A No. It might have been, you know,</p> <p>8 if there were any pricing changes is the only time</p> <p>9 that would occur.</p> <p>10 Q Do you ever recall receiving any</p> <p>11 written information about the price, about price</p> <p>12 changes?</p> <p>13 A I just do not recall.</p> <p>14 Q Now, you were notified of price</p> <p>15 changes by voicemail, do you know whether your</p> <p>16 customers had contracts with BMS that may have</p> <p>17 differed from the price that you were, you know,</p> <p>18 the price information that you received by</p> <p>19 voicemail?</p> <p>20 A Not that I'm aware of.</p> <p>21 Q So as far as you're aware, they were</p> <p>22 all paying whatever the prevailing price was that</p>
<p>35</p> <p>1 Q What about, putting aside the AWP</p> <p>2 for a second, what about the price that your</p> <p>3 customers were paying for the drugs you were</p> <p>4 promoting, did you have an understanding what the</p> <p>5 price they were paying was?</p> <p>6 A Yes.</p> <p>7 Q How did you come to have that</p> <p>8 information?</p> <p>9 A We would be notified of, you know,</p> <p>10 pricing on voicemail, that's the only recollection</p> <p>11 that I have about pricing info.</p> <p>12 Q That it was distributed at least to</p> <p>13 yourself by voicemail?</p> <p>14 A Uh-hum.</p> <p>15 Q Were those sort of broadcast</p> <p>16 voicemails?</p> <p>17 A Yes.</p> <p>18 Q Were they directed specifically to</p> <p>19 you?</p> <p>20 A No, it was a broadcast.</p> <p>21 Q And by broadcast we mean they were</p> <p>22 broadcasted to more than one individual at BMS?</p>	<p>37</p> <p>1 you were notified of by voicemail?</p> <p>2 A Yes.</p> <p>3 Q And you didn't -- were you involved</p> <p>4 at all in the contracting process with any of your</p> <p>5 customers --</p> <p>6 A No.</p> <p>7 Q -- if there was one?</p> <p>8 A No.</p> <p>9 Q Did you ever discuss contracts with</p> <p>10 any of your customers?</p> <p>11 A Only to refer them to the group</p> <p>12 within BMS that handled GPOs.</p> <p>13 Q What was the name of that group, do</p> <p>14 you remember?</p> <p>15 A I don't remember.</p> <p>16 Q Did you work with a partner or</p> <p>17 partners when you were a sales rep?</p> <p>18 A Off and on, yes.</p> <p>19 Q I hate to tax your memory, but can</p> <p>20 you take me back from '92 to 2002?</p> <p>21 A It wasn't that many. So Kathy Smith</p> <p>22 was in Huntington, West Virginia and Cherie Blom,</p>



Dana Faulkner

August 16, 2005

New York, NY

<p style="text-align: right;">42</p> <p>1 Q You can answer.</p> <p>2 A No.</p> <p>3 Q Do you recall having a conversation</p> <p>4 with any of your partners about Average Wholesale</p> <p>5 Price for BMS drugs?</p> <p>6 A No.</p> <p>7 Q Were the clients that you were</p> <p>8 calling on -- I'm sorry, I keep calling them</p> <p>9 clients.</p> <p>10 A That's okay.</p> <p>11 Q The customers --</p> <p>12 A The customers.</p> <p>13 Q -- the physicians that you were</p> <p>14 calling on, did you have conversations with them</p> <p>15 about the cost of the BMS drugs at all, that you</p> <p>16 can recall?</p> <p>17 A They would occasionally ask about</p> <p>18 the price of the drug, so on occasion yes, I</p> <p>19 would, you know, answer any questions.</p> <p>20 Q Were there any materials that you</p> <p>21 had in your possession that were used to answer</p> <p>22 those questions and to leave with a customer about</p>	<p style="text-align: right;">44</p> <p>1 Q Can you recall that ever happening?</p> <p>2 A Yes.</p> <p>3 Q How often?</p> <p>4 A Not often.</p> <p>5 Q Once a month, once a quarter?</p> <p>6 A Once a quarter might be fairly</p> <p>7 accurate.</p> <p>8 Q Can you recall ever having</p> <p>9 conversations with any of your customers, your BMS</p> <p>10 customers about how reimbursement, Medicare</p> <p>11 reimbursement worked for BMS drugs?</p> <p>12 A That was their expertise, so that</p> <p>13 was really not my job in my job description to</p> <p>14 have those discussions.</p> <p>15 Q So do you recall any discussions</p> <p>16 like that?</p> <p>17 A No.</p> <p>18 Q How about, I've asked about</p> <p>19 Medicare, how about discussions about how private</p> <p>20 insurance would reimburse BMS drugs?</p> <p>21 A No.</p> <p>22 Q Were you partnered with anyone at</p>
<p style="text-align: right;">43</p> <p>1 the cost?</p> <p>2 A Along those lines the only info that</p> <p>3 I remember leaving is info regarding a program</p> <p>4 called Pro Search. If they were asking about</p> <p>5 indigent coverage or coverage of the drug in a</p> <p>6 particular tumor type, then I would leave, you</p> <p>7 know, info on the program.</p> <p>8 Q What sort of information was that,</p> <p>9 was that a pamphlet or a booklet?</p> <p>10 A Yes, typically a brochure with 800</p> <p>11 numbers and specifics on the program.</p> <p>12 Q Can you recall customers asking you</p> <p>13 about -- well, you said that you had information</p> <p>14 related to the AWP available to you in the booklet</p> <p>15 that you described before. Did you ever have</p> <p>16 occasion or did customers ever ask you about the</p> <p>17 Average Wholesale Price for the drugs you were</p> <p>18 promoting?</p> <p>19 A Well, that same publication was</p> <p>20 available to them so that's where they could get</p> <p>21 that information too. So if they asked about it,</p> <p>22 you know, that is where we would refer them.</p>	<p style="text-align: right;">45</p> <p>1 OTN while you were a sales rep for BMS?</p> <p>2 A Not partnered, no.</p> <p>3 Q Did you have primary -- did you have</p> <p>4 contact with employees of OTN?</p> <p>5 A Yes.</p> <p>6 Q Did you have contact with specific</p> <p>7 OTN employees?</p> <p>8 A Yes.</p> <p>9 Q In what context?</p> <p>10 A Names of people?</p> <p>11 Q Sure. And just sort of, before I</p> <p>12 get to names, why would you have occasion to have</p> <p>13 contact with people at OTN?</p> <p>14 A We would run into each other, you</p> <p>15 know, in accounts.</p> <p>16 Q So while you were out doing a call</p> <p>17 on a doctor, you might run into an OTN rep?</p> <p>18 A Uh-hum. And I would forward any</p> <p>19 questions about OTN, you know, from my customers</p> <p>20 to them.</p> <p>21 Q Do you know how many of your</p> <p>22 customers at any point obtained pharmaceuticals</p>

Dana Faulkner

August 16, 2005

New York, NY

<p style="text-align: right;">66</p> <p>1 Q So what was your response when he</p> <p>2 would bring this subject up?</p> <p>3 A Well, I tried to respond in general</p> <p>4 terms still addressing, you know, his concerns and</p> <p>5 let him know that, you know, I have no control</p> <p>6 over either one of those issues and, you know,</p> <p>7 that the price of the drug was what it was and,</p> <p>8 you know, the AWP the same thing. You know, he</p> <p>9 just initiated this so often. But, you know, that</p> <p>10 was his focus, you know, the numbers were his</p> <p>11 focus.</p> <p>12 Q Did he ever share with you any sort</p> <p>13 of analysis that he had done about, you know, AWP,</p> <p>14 spread, the usage by his office?</p> <p>15 A No.</p> <p>16 Q Did you ever report his concerns to</p> <p>17 your immediate supervisor or anyone else at BMS?</p> <p>18 A You know, I reported it, you know,</p> <p>19 in call reports and in discussions, you know, with</p> <p>20 my manager knowing that this was a request that,</p> <p>21 you know, wasn't going anywhere.</p> <p>22 Q Was this the account, the only</p>	<p style="text-align: right;">68</p> <p>1 A I don't, I don't recall that, that</p> <p>2 name, I don't recall what that would have been.</p> <p>3 Q Okay. Would you ever receive any</p> <p>4 training from BMS about the -- well, let's take it</p> <p>5 in small steps.</p> <p>6 Did you ever receive any training</p> <p>7 from BMS about how drugs were reimbursed, how</p> <p>8 BMS drugs were reimbursed?</p> <p>9 A Yes.</p> <p>10 Q What sort of training?</p> <p>11 A It was for our understanding, it was</p> <p>12 not for promotional purposes, it was for our own</p> <p>13 education to give the sales force. You know, our</p> <p>14 sole responsibility was selling to these oncology</p> <p>15 practices and we needed a well-rounded</p> <p>16 understanding of how the practice operates and</p> <p>17 knew that, you know, questions could be raised so</p> <p>18 we -- it was more or less an educational training</p> <p>19 on how the practice operates.</p> <p>20 Q Was this training, did you receive</p> <p>21 this training at more than one point during the 10</p> <p>22 years you were at BMS?</p>
<p style="text-align: right;">67</p> <p>1 account that ever -- with which you ever had these</p> <p>2 types of discussions?</p> <p>3 A That I can recall, he completely</p> <p>4 sticks out in my brain, yes.</p> <p>5 Q He sticks out because he was so</p> <p>6 persistent about the issue?</p> <p>7 A Yes.</p> <p>8 Q Putting aside that he sort of is the</p> <p>9 biggest in your mind and the first to come to</p> <p>10 mind, are there any other conversations that you</p> <p>11 can recall where you discussed either with or the</p> <p>12 doctor or someone in the doctor's practice the</p> <p>13 difference between what the practice was paying</p> <p>14 versus what they could be reimbursed at?</p> <p>15 A No, that was not the route that I</p> <p>16 took in my discussions.</p> <p>17 Q Do you recall a program called the</p> <p>18 Practice Efficiency Program at BMS?</p> <p>19 A No.</p> <p>20 Q So you never received any training</p> <p>21 or presentation at all on the practice, something</p> <p>22 called the Practice Efficiency Program?</p>	<p style="text-align: right;">69</p> <p>1 A I don't recall.</p> <p>2 Q Do you recall, is there a specific</p> <p>3 training that you recall?</p> <p>4 A Not with a name per se.</p> <p>5 Q In what context do you recall</p> <p>6 receiving this information?</p> <p>7 A At a sales meeting of some type.</p> <p>8 Q Do you recall when that sales</p> <p>9 meeting may have taken place?</p> <p>10 A No.</p> <p>11 Q Was it early on in the 10 years, was</p> <p>12 it later in the 10 years, middle?</p> <p>13 A I couldn't tell you.</p> <p>14 Q Can you recall whether it was in the</p> <p>15 first year of your employment there?</p> <p>16 A I wouldn't, I wouldn't think so.</p> <p>17 Q Can you tell whether it was in the</p> <p>18 last year of your employment?</p> <p>19 A No, I wouldn't think so.</p> <p>20 Q Do you remember how -- the meeting</p> <p>21 that you're recalling, was it a regional meeting,</p> <p>22 a national meeting?</p>



Dana Faulkner

August 16, 2005

New York, NY

<p style="text-align: right;">70</p> <p>1 A I don't remember.</p> <p>2 Q Can you recall whether it was a big</p> <p>3 space or a small space?</p> <p>4 A Oh --</p> <p>5 Q Bigger than a bread box?</p> <p>6 A So many meetings, I don't recall.</p> <p>7 Q Do you remember who gave the</p> <p>8 presentation?</p> <p>9 A No.</p> <p>10 Q Do you remember if there were any</p> <p>11 materials handed out during this, let's call it a</p> <p>12 presentation?</p> <p>13 A I don't remember if we had</p> <p>14 materials.</p> <p>15 Q You didn't come across any such</p> <p>16 materials in your search of the files in your</p> <p>17 basement, did you?</p> <p>18 A No.</p> <p>19 Q Do you remember whether it was more</p> <p>20 than one person gave a presentation or just one?</p> <p>21 A I don't recall that either.</p> <p>22 Q Do you ever recall using the</p>	<p style="text-align: right;">72</p> <p>1 Medicare reimbursement is based on a percentage of</p> <p>2 AWP?</p> <p>3 A Yes.</p> <p>4 Q Can you recall what other, what else</p> <p>5 was discussed besides Medicare billing?</p> <p>6 A Along those lines probably J codes,</p> <p>7 any coding information that would be used on a</p> <p>8 claim specific to our drugs.</p> <p>9 Q Were you ever provided information</p> <p>10 about the price of competing drugs?</p> <p>11 A Oh, I don't recall that.</p> <p>12 Q So were you aware as you did your</p> <p>13 job of the price of competing or the drugs that</p> <p>14 were competing with the ones that you were</p> <p>15 selling?</p> <p>16 A Not usually.</p> <p>17 Q How about of the AWP of those drugs?</p> <p>18 A No.</p> <p>19 Q Well, the compendia, the compendia</p> <p>20 that you mentioned, that wasn't a compendia of</p> <p>21 just BMS drugs?</p> <p>22 A Yes.</p>
<p style="text-align: right;">71</p> <p>1 information that you received of that presentation</p> <p>2 in your calls on customers?</p> <p>3 A Well, I don't recall receiving</p> <p>4 anything printed, so is that what you're asking?</p> <p>5 Q Well, that's part of the question.</p> <p>6 So you don't recall, you know, using any printed</p> <p>7 materials that may or may not have been handed out</p> <p>8 at that presentation. What about the substantive</p> <p>9 information, do you recall using that in your</p> <p>10 conversations with customers?</p> <p>11 A No, because again that was not the</p> <p>12 focus of my calls.</p> <p>13 Q I believe you said that you haven't</p> <p>14 given it a particular name but you said that the</p> <p>15 presentation we're talking about was focused on</p> <p>16 how the practice worked, I didn't write down</p> <p>17 exactly what you said, so can you characterize for</p> <p>18 me what was the nature of the presentation?</p> <p>19 A Well, I can remember just a review</p> <p>20 of the Medicare, just how the Medicare billing</p> <p>21 worked in an oncology practice.</p> <p>22 Q So did that include the fact that</p>	<p style="text-align: right;">73</p> <p>1 Q So if a competing drug was in there,</p> <p>2 its AWP would have also been in there?</p> <p>3 A Yes.</p> <p>4 Q Was Dr. Chambers a client for the</p> <p>5 entire 10 years that you were at BMS?</p> <p>6 A I don't think so, I believe there</p> <p>7 were a few years where I did not cover that</p> <p>8 territory, that geography.</p> <p>9 Q You said you had conversation or you</p> <p>10 reported Dr. Chambers or Ed Chambers complaints</p> <p>11 to, I think you said, to your supervisor at the</p> <p>12 time; is that correct?</p> <p>13 A Yes.</p> <p>14 Q And can you tell me a little bit</p> <p>15 about those conversations or was it more than one</p> <p>16 conversation?</p> <p>17 A Possibly. Kind of tongue-and-cheek</p> <p>18 conversations just about this guy that has issues</p> <p>19 that are not going to be -- no changes can be</p> <p>20 made, you know, in terms of the request that he's</p> <p>21 asking and the fact that I basically had told him</p> <p>22 that.</p>